RELATION OF SHAREHOLDERS AND CREDITORS OF A CORPORATION TO ITS DIRECTORS.—Much confusion has arisen in the cases dealing with the relation of the directors of a corporation to its stockholders and creditors through the loose use of the terms trust and trustee, to cover fiduciary relations other than those springing from the technical trust, and through the fact that both sets of relations often give rise to the same rights and duties. The subject has been further confused by the fact that stockholders, and in certain circumstances creditors, are given a remedy in equity against directors of a corporation, where the corporation fails to act against them. The courts usually describe the directors as trustees for the shareholders and creditors, and speak of the latter as *cestuis*. In certain jurisdictions giving strict effect to this loose terminology they have refused to permit the bar of the statute of limitations to be interposed by a director against the stockholder or creditor, on the ground that the statute does not run in favor of a trustee. *Williams* v. *McKay*, (1885) 40 N. J. Eq. 189. *Ellis* v. *Ward et al.* (1890) 137 Ill. 509.

The Supreme Court of Wisconsin has had occasion, recently, to examine these cases, and has decided that the statute is a bar to such action, since the corporation could have maintained an action at law, and the creditors are merely enforcing this right of action in equity. *Boyd* v. *Mutual Fire Association*, (Wis. 1903) 94 N. W. 171. This seems to be based on more logical reasoning. The corporation holds title to all corporate property. With respect to that property, therefore, the directors are merely agents entrusted with possession, and so cannot be technical trustees. The mere fact that, as an element of their contract of agency arising out of the fiduciary capacity in which they act, they are amenable to much the same rules as trustees with respect to property in their possession, or that equity assumes control over their acts, does not change the inherent character of their relation to the corporation. Trustee, used to describe that relation, merely means fiduciary. *Spering's Appeal.* (1872) 71 Pa. St. 11. 2 Pomeroy's Eq. Juris. §1091. Nor does the fact that the stockholders or creditors have equitable remedies against the directors make the latter trustees for them The stockholder or creditor does not sue in his own right, but solely in the right of the corporation. 2 Pomeroy Eq. Juris. §1094. *Greaves* v. *Gouge*, (1877) 69 N. Y. 154, at p. 157. To say that the director is his trustee describes his remedy, not his right. He is given a remedy in equity because the law has not provided for the situation here arising from the peculiar nature of the corporate person. Incapable of acting except through its agents it finds itself helpless if its agents refuse to act for it. Further, the relief given in this situation is analogous, perhaps, to that where a cestui enforces the trustee's claim in equity, either against agents defaulting in trust business, the trustee refusing to sue at law, *Att'y General* v. *the Corporation* (1844) 7 Beav. 175, or, more generally, against third parties on trust claims when the trustee refuses to act. Whether or not the corporation can properly be said to hold its claim in trust for shareholders and creditors is immaterial in determining whether or not the statute is a bar to suits against the director. *Wych* v. *East India Co.* (1734) 3 P. Wms. 309. In the

case under consideration, then, the creditor or stockholder sues on a purely legal demand. He sues on such demand in behalf of the corporation, and the cause of action belongs to it. The equitable remedy is merely a mode of enforcing this demand. Here certainly is no technical trust, and it is only in the case of such a trust that the bar of the statute of limitations is properly suspended. *Mason* v. *Henry* (1897) 152 N. Y. 529; *Wallace* v. *Lincoln's Savings Bank* (1890) 89 Tenn. 630; *Landes* v. *Saxon* (1895) 105 Mo. 486; *Kane* v. *Bloodgood* (1825) 7 Johns. Ch. 90.

RIGHTS OF PLEDGEES OF PERSONAL PROPERTY UNDER CONFLICTING LAWS.—Lord LOUGHBOROUGH, in 1791, laid it down as a "clear proposition, not only of the law of England, but of every country in the world, where law has the semblance of science, that personal property has no locality," and that, "with respect to the disposition of it, with respect to the transmission of it, either by succession or the act of the party, it follows the law of the person." *Sill* v. *Worswick* (1791) 1 H. Bl. 665. Since then there has been a constantly growing disposition to change that rule of law to meet radical changes in economic conditions, which have given to accumulations of personal property —until the last century of comparatively little consequence, and often actually *cum persona*—an even greater importance in the state than is attached to land. The new conditions have called for the recognition of the principle that, as transactions relating to realty are governed by the *lex situs*, similarly, transactions with respect to personalty should be governed by the *lex rei sitæ*, approving the doctrine developed on the continent and expounded by Savigny, that no distinction should be made in this respect between movables and immovables. Savigny, VIII, Sec. 366; Whart. Confl. L. p. 297, 305.

In the departure from the old rule, a distinction is drawn definitely between cases of succession, as in marriage, death and bankruptcy, where the property is conceived of as grouped round the person, and so governed by the law of the domicile, and isolated transactions of alienation and the creation of special claims against the property, in which it is to be considered independently of its owner, and so governed by the law where it is situated. Westl. Priv. International Law, p. 172. It will be noted that this distinction was not made by Lord LOUGHBOROUGH. Out of it comes a present rule that questions as to the transfer or acquisition of property in corporeal movables, or of any less extensive real rights in them, as pledge or lien, are generally to be decided by the *lex rei sitæ*. *Inglis* v. *Usherwood* (1801) 1 East, 515; *Coote* v. *Jeekes* (1872) L. R. 13 Eq. 597. The Supreme Court of Minnesota has adopted this view in denying a preference, under a voluntary assignment for the benefit of creditors, to non-resident pledgees, who held grain warehouse receipts as security for promissory notes, the grain being situated in Iowa, Nebraska and South Dakota, where such pledge was invalid, holding that the transaction was governed by the *lex rei sitæ*. *In re St. Paul & K. C. Grain Co.* (Minn. 1903) 94 N. W. 218.

It was early decided in the Supreme Court of the United States that, as to priority of conflicting liens, the *lex rei sitæ* prevails, the